

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

SARAH COURTNEY CENTER,

Plaintiff,

vs.

CATHOLIC WORKER HOUSE,

Defendant.

No. 19-CV-28-CJW-KEM

ORDER

This matter is before the Court on a Report and Recommendation (“R&R”) of the Honorable Kelly K.E. Mahoney, United States Magistrate Judge. (Doc. 22). On March 19, 2019, plaintiff filed a pro se complaint against defendant. (Doc. 4). On April 9, 2019, defendant timely filed an answer. (Doc. 6).

On June 18, 2019, the Court issued a Scheduling Order and Discovery Plan. (Doc. 11). On November 6, 2019, plaintiff filed a motion to resist discovery. (Doc. 14). On November 8, 2019, defendant timely filed a resistance to plaintiff’s motion. (Doc. 16). On November 12, 2019, the Court denied plaintiff’s motion. (Doc. 17).

On January 3, 2020, defendant filed a motion to compel plaintiff to respond to discovery requests. (Doc. 19). Plaintiff never resisted. On January 24, 2020, the Court granted defendant’s motion and ordered plaintiff to respond to discovery requests by February 7, 2020. (Doc. 20). The Order further stated: “**NOTICE: If Plaintiff fails to respond to Defendant’s discovery requests as required by this order, the court will consider imposing sanctions (including dismissal of the case) as provided for in Federal Rule of Civil Procedure 37(b).**” (*Id.*, at 1).

On February 10, 2020, defendant filed a motion for sanctions against plaintiff. (Doc. 21). In its motion, defendant asserts plaintiff has still not responded to discovery requests despite this Court’s Order. (Doc. 21). Thus, defendant requests that the Court

enter an order granting sanctions against plaintiff and dismissing this case. (*Id.*, at 1). Plaintiff did not respond to defendant's motion.

On March 18, 2020, Judge Mahoney issued her R&R, recommending the Court dismiss this case with prejudice as a result of plaintiff's failure to comply with discovery. (Doc. 22). The deadline to object to the R&R was April 1, 2020. Neither party filed objections.

Federal Rule of Civil Procedure 37(b) concerns failures to comply with court orders. Rule 37(b)(2)(A) states that "[i]f a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders." Such just orders include "dismissing the action." FED. R. CIV. P. 37(b)(2)(A)(v). Before invoking dismissal as a sanction, however, courts must consider whether a less extreme sanction would suffice. *Avionic Co. v. Gen. Dynamics Corp.*, 957 F.2d 555, 558 (8th Cir. 1992). Such alternatives need not be considered if a "party's failure was deliberate or in bad faith." *Id.* (citations omitted). Dismissal should only occur in narrow circumstances. *Schubert v. Pfizer, Inc.*, 459 Fed. App'x 568, 572 (8th Cir. 2012). Thus, dismissal is generally only considered as a sanction for discovery violations when (1) there was an order compelling discovery, (2) that order was willfully violated, and (3) prejudice to the other party resulted. *Keefer v. Provident Life & Acc. Ins. Co.*, 238 F.3d 937, 940 (8th Cir. 2000); *see also Heidersheid v. Russell*, No. 18-cv-1733 (NEB/SER), 2019 WL 6075123, at *2 (D. Minn. Oct. 15, 2019) (same).

Dismissal is an appropriate sanction here. Plaintiff's motion to resist discovery was denied. Despite this, she continued to resist discovery. Defendant moved to compel discovery and plaintiff never responded. This Court ordered plaintiff to respond to discovery. Plaintiff never objected or responded to that Order. Thereafter, plaintiff still failed to respond to discovery. Defendant then filed a motion for sanctions and plaintiff never responded. Judge Mahoney issued her R&R noting plaintiff's failures and recommending dismissal. Plaintiff again failed to object or respond. Aside from

plaintiff's November 18, 2019 correspondence discussing grievances unrelated to this case (Doc. 18), plaintiff has not filed any documents with the Court since her motion to resist discovery (Doc. 14). Plaintiff willfully violated this Court's Order to respond to discovery which has prejudiced defendant. Plaintiff's repeated failures to respond and comply with deadlines warrants dismissal here.

For these reasons, the Court **adopts** Judge Mahoney's R&R without modification (Doc. 22), defendant's motion for sanctions is **granted** (Doc. 21), and this case is **dismissed with prejudice**. The Clerk's Office is directed to enter judgment against plaintiff and in favor of defendant.

IT IS SO ORDERED this 2nd day of April, 2020.



C.J. Williams
United States District Judge
Northern District of Iowa